IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

DAVID LYNCH,)	
Plaintiff,)	
v.)	Case No. 3:11CV177-CWR-FKB
XANODYNE PHARMACEUTICALS, INC.,)	
QUALITEST PHARMACEUTICALS, INC.,)	
ELI LILLYAND COMPANY, and JOHN DOES 1-5 AND JOHN DOES 6-10)	
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Defendants.)	

PLAINTIFF DAVID LYNCH'S RESPONSE IN OPPOSITION TO DEFENDANT ELI LILLY AND COMPANY'S 12(b)(6) MOTION TO DISMISS

COMES NOW the Plaintiff, David Lynch, by and through undersigned counsel, and files this response in opposition to the 12(b)(6) Motion to Dismiss filed by Defendant Eli Lilly and Company, and would show as follows:

- 1. Plaintiff's Complaint properly stated claims against Lilly.
 - a. Lilly was the innovator of Darvocet, with its manufacturing dating back to the 1950's. The company designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and distributed Darvocet until 2002.
 - b. During that time, Lilly failed to ensure the quality and safety of Darvocet, leaving consumers and the medical community without knowledge about the dangers associated with Darvocet, which has led to thousands of deaths.
 - c. From 2002 until the drug's market withdrawal in 2010, Lilly continued to derive benefit and income from Darvocet.

2. Defendant Lilly has offered factual and discoverable material in the company's 12(b)(6) motion arising to the level of a FRCP 56 motion for summary judgment. Should Lilly continue with the motion to dismiss, Plaintiff requests this motion be converted into a motion for summary judgment, warranting further discovery.

WHEREFORE, PREMISES CONSIDERED, Plaintiff David Lynch respectfully requests that this Court deny Defendant Eli Lilly and Company's 12(b)(6) Motion to Dismiss.

Respectfully submitted this the 5th day of May, 2011.

DAVID LYNCH

BY: <u>/s/ Gerald J. Diaz, Jr.</u> GERALD J. DIAZ, JR.

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2011, I electronically filed *Plaintiff's First Amended Complaint* with the Clerk of this Court using the CM/ECF system, which provided a service copy on the following:

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I hereby certify that on May 5, 2011, I also provided a service copy on the following:

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